

1 District Judge Jamal N. Whitehead
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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PLAINTIFF PACITO; PLAINTIFF
ESTHER; PLAINTIFF JOSEPHINE;
PLAINTIFF SARA; PLAINTIFF ALYAS;
PLAINTIFF MARCOS; PLAINTIFF
AHMED; PLAINTIFF RACHEL;
PLAINTIFF ALI; HIAS, INC.; CHURCH
WORLD SERVICE, INC.; and
LUTHERAN COMMUNITY SERVICES
NORTHWEST,

CASE NO. 2:25-cv-00255
DEFENDANTS' OPPOSITION TO
MOTION FOR CLASS CERTIFICATION

NOTE ON MOTION CALENDAR:
April 11, 2025

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States,
MARCO RUBIO, in his official capacity
as Secretary of State, KRISTI NOEM, in
her official capacity as Secretary of
Homeland Security; ROBERT F.
KENNEDY, JR., in his official capacity as
Secretary of Health and Human Services,

Defendants.

INTRODUCTION

Plaintiffs seek extraordinary, sweeping class-wide relief to invalidate or enjoin discretionary and system-wide decisions regarding the United States Refugee Admissions Program (USRAP). In doing so, they propose multiple subclasses, each challenging complex individualized determinations—from alleged “delays” to “funding terminations” and “reception & placement” processing—yet all under a single umbrella of class-wide treatment. But the proposed subclasses fail nearly every prerequisite under Rule 23.

First, the proposed classes sweep in individuals who have not suffered any cognizable injury, are not in the same procedural posture, or remain mid-process and thus lack ripe or exhausted claims. *Second*, there is no single “common policy” that uniformly applies to each proposed class member. They differ in factual posture (*e.g.*, family-based refugee petitions versus post-arrival reception and placement (R&P) benefits) and legal basis (statutory, regulatory, or constitutional claims), undermining commonality and typicality. *Third*, the relief sought would require a host of individualized reviews or “mini-trials,” rendering Rule 23(b)(2) certification wholly improper. Class-wide injunctive or declaratory relief cannot remedy a wide variety of case-specific issues.

Lastly, fundamental justiciability principles—jurisdiction, standing, mootness, exhaustion, and the separation-of-powers constraints—further demonstrate that class certification is both unnecessary and inappropriate. For these reasons, the Court should deny Plaintiffs’ Motion for Class Certification in its entirety. Crucially, this Court should decline to certify a class of Plaintiffs whose funding claims are beyond this Court’s jurisdiction and instead belong in the Court of Federal Claims. Indeed, the Supreme Court recently reaffirmed that “the APA’s limited waiver of immunity does not extend to orders ‘to enforce a contractual obligation to pay money.’ ... Instead, the Tucker Act grants the Court of Federal Claims jurisdiction over suits based on ‘any express or implied contract with the United States.’ 28 U. S. C. §1491(a)(1)....” *Department of Education v. California*, 604 U. S. ___, 3 (April 4, 2025). This Court should also hold off on any class certification while the

1 government's appeals are pending in the Ninth Circuit, which will provide substantial clarity
 2 relating to the issues before this Court.

FACTUAL AND PROCEDURAL BACKGROUND

I. USRAP Background

4 The Court is familiar with the background of this action, but to summarize: the
 5 USRAP was established by the Refugee Act of 1980, which amended the Immigration and
 6 Nationality Act. The USRAP is jointly administered by the Department of State (DOS), the
 7 Department of Homeland Security (DHS), and the Department of Health and Human
 8 Services (DHHS), with support from the United Nations and nonprofit agencies. Dkt. No. 45
 at 3-4.

9 DOS administers aspects of the USRAP through "cooperative agreements" with
 10 resettlement agencies under the Federal Grant and Cooperative Agreement Act (Grants Act),
 11 which distinguishes cooperative agreements from procurement contracts. These agreements
 12 are subject to regulations promulgated by the Office of Management and Budget (OMB),
 13 including 2 C.F.R. § 200.340, which governs termination of agreements.

II. The Termination and Realignment of the USRAP Funding

14 On January 20, 2025, hours after taking office, President Trump issued Executive
 15 Order 14163, "Realigning the United States Refugee Admissions Program." See Executive
 16 Order No. 14163, 90 Fed. Reg. 8459 (Jan. 20, 2025) (USRAP EO). The Agency Defendants
 17 immediately halted refugee processing and paused funding to resettlement agencies like
 18 Plaintiffs Church World Services, Inc. (CWS) and HIAS, Inc. For the reasons explained
 19 from the bench and in a later written order, the Court enjoined these actions. Dkt. Nos. 42
 (Hr'g Tr.) at 37; 45 (Order) at 61.

20 One day after the Court's oral ruling, DOS began terminating its cooperative
 21 agreements with the resettlement agencies. Between February 26 and 27, DOS terminated
 22 every resettlement agency cooperative agreement to provide R&P services for the USRAP.
 23 See Dkt. No. 49-2 ¶¶ 4-5. DOS also terminated all but one of the cooperative agreements to

1 provide USRAP processing support abroad.¹ See Dkt. No. 58-2 ¶¶ 5–9 (HIAS Decl.); 58-3
 2 ¶¶ 5–9 (CWS Decl.). The Court has referred to the termination of these two types of
 3 cooperative agreements as the “Funding Termination.” Dkt. No. 79 at 5. To implement the
 4 Funding Termination, DOS issued notices (“Termination Notice”) to each funding partner
 5 terminating the award. See Dkt. Nos. 44-3; 44-5; 44-6. The Funding Termination resulted
 6 from reviews that DOS began on February 21, 2025, at Secretary Rubio’s direction. Dkt. No.
 7 49-2 ¶ 3. The Government acknowledges that this has caused a “significant deterioration of
 8 functions throughout the USRAP,” Dkt. No. 62 at 3.

III. Plaintiffs’ Move for Class Certification, Proposing Three Subclasses and Eight Class Representatives

On March 14, 2025, Plaintiffs moved for class certification. Dkt. No. 71 (Plaintiffs’ Motion). Plaintiffs seek to certify three broad subclasses that would encompass “many thousands” of diverse individuals. Mot. at 1. First, Plaintiffs propose the Refugee and Family Member Subclass, which would include essentially all persons who are or will be processed for admission to the United States as refugees, as well as anyone who has applied or will apply to bring a family member to the United States as a refugee. Mot. at 1. This subclass effectively seeks to cover the entire population of current and future refugee applicants and their families, regardless of individual circumstances or the reasons underlying their cases.

¹ While not terminated, CWS’s contract remains suspended until its “concurrence” with Executive Order 14151, “Ending Radical and Wasteful Government DEI Programs and Preferencing”; Executive Order 14148, “Initial Recissions of Harmful Executive Orders and Actions”; and Executive Order 14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.” Dkt. No. 62 at 3. All three Executive Orders are subject to ongoing litigation, and courts have enjoined portions of them. See, e.g., *Nat'l Assoc. of Diversity Officers in Higher Educ. v. Trump*, Case No. 1:25-cv-00333-ABA (D. Md. Fed. 2, 2025); *Am. Assoc. of Colleges for Tchr. Educ. v. Carter*, Case No. 1:25-cv-00702-JRR (D. Md. Mar. 3, 2025); *N. Alaska Envtl. Ctr. v. Trump*, Case No. 3:25-cv-00038 (D. Alaska Feb. 19, 2025); *Jones v. Trump*, Case No. 1:25-cv-00401 (D.D.C. Feb. 10, 2025); *Kingdom v. Trump*, Case No. 1:25-cv-00691 (D.D.C. Mar. 7, 2025); *Doctors for Am. v. Office of Pers. Mgmt. et al.*, Case No. 1:25-cv-00322 (D.D.C. Feb. 2, 2025).

1 *Second*, Plaintiffs propose the R&P Subclass, encompassing all refugees and Special
 2 Immigrant Visa (SIV) holders in their first ninety-days post-resettlement. *Id.* This subclass
 3 would cover a vast number of individuals across the country who have recently arrived and
 4 are navigating the early stages of resettlement, regardless of their specific needs or
 5 experiences. *Third*, the Follow-to-Join (FTJ) Petitioner Subclass would encompass U.S.-
 6 based petitioners admitted as refugees who have filed or will file a petition for family
 7 members to be admitted through the follow-to-join refugee process. *Id.* At bottom, however,
 8 each subclass challenges decisions that arise from individualized, fact-specific
 9 determinations, rely on discretionary agency judgments, and implicate programmatic
 10 realignments entrusted to the Executive Branch.

IV. Plaintiffs' Eight Proposed Class Representatives

10 Plaintiffs name eight individuals seeking relief on behalf of themselves and proposed
 11 subclasses. Mot. at 5. Plaintiffs Pacito, Esther, Josephine, Sara, Alyas, Marcos, Ahmed, and
 12 Ali collectively claim that Defendants' actions—namely suspending refugee processing and
 13 admissions and halting USRAP-related funding—interfere with their ability to be resettled,
 14 reunite with family members, or receive post-resettlement services. *See id.*; Dkt. No. 15-14
 15 (Pacito Decl.); Dkt. No. 15-15 (Esther Decl.); Dkt. No. 15-16 (Josephine Decl.); Dkt. No.
 16 15-17 (Sara Decl.); Dkt. No. 15-18 (Alyas Decl.); Dkt. No. 15-19 (Marcos Decl.); Dkt. No.
 15-20 (Ali Decl.); Dkt. No. 15-21 (Ahmed Decl.).

A. Refugee and Family Member Subclass Representatives

17 Plaintiffs Pacito, Sara, Alyas, Marcos, Josephine, and Ahmed seek to represent the
 18 Refugee and Family Member Subclass. Mot. at 5. Besides Josephine, who now resides in the
 19 United States, these plaintiffs currently reside abroad and seek resettlement to the United
 20 States through the USRAP. *Id.* (citations omitted). Plaintiff Marcos also filed a petition for
 21 his stepdaughter to apply for admission as a refugee. *Id.* (citations omitted). In their
 22 declarations, these representatives describe how Defendants' actions halted the processing of
 23 their refugee applications, leading to various alleged personal hardships including financial
 24 challenges, inability to work, and continued claimed risks in their current countries of
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1 residence. *Id.* (citations omitted). Critically, Josephine has resettled in the United States. As
 2 such, her claims are moot and she cannot represent the subclass.

3 **B. FTJ Petitioner Subclass Representatives**

4 Plaintiff Esther seeks to represent the FTJ Petitioner Subclass. *Id.* Esther, a U.S.
 5 citizen and former refugee residing in Idaho, petitioned for the reunification with her
 6 daughter, Plaintiff Josephine, through the FTJ program. Mot. at 5-6. At the time of filing,
 7 Plaintiff Esther claimed her petition remained unprocessed, leaving her separated from her
 8 daughter, who continued to face discrimination and violence in South Africa. *Id.* (citation
 9 omitted). Critically, Esther's petition has now been processed. As such, her claims are moot
 and she cannot represent the subclass, leaving the subclass without a proposed
 representative.

10 **C. Reception and Placement (R&P) Subclass Representatives**

11 Plaintiff Ali seeks to represent the R&P Subclass, comprised of recently resettled
 12 refugees who require post-arrival support and services. Mot. at 6. Plaintiff Ali, who arrived
 13 in the United States in January 2025, alleges that Defendants' reduction in funding
 negatively impacted his access to reception and placement assistance. Mot. at 6 (citing Ali
 14 Decl. ¶ 24).

15 **ARGUMENT**

16 Class certification is an "exception to the usual rule that litigation is conducted by and
 17 on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.
 18 338, 348 (2011). To justify this exception, the burden falls squarely on Plaintiffs to establish
 19 that their proposed subclasses satisfy the stringent requirements of Rule 23(a) and at least
 20 one prong of Rule 23(b). This mandate exists because class certification imposes significant
 21 legal and practical consequences, including binding absent members and altering the
 22 procedural posture of the case. Thus, Plaintiffs must demonstrate that each of their proposed
 23 subclasses meet the fundamental prerequisites of numerosity, commonality, typicality, and
 adequacy. Moreover, where, as here, Plaintiffs seek injunctive or declaratory relief under

1 Rule 23(b)(2), they must establish that the requested relief is appropriate for every member
 2 of the proposed class.

3 Here, Plaintiffs fall short of meeting Rule 23's mandate. Their proposed subclasses—
 4 encompassing virtually all persons processed as refugees, all newly resettled refugees and
 5 SIV holders, and all U.S.-based petitioners for follow-to-join refugee cases—are sweeping in
 6 scope and breathtakingly broad. These subclasses fail to account for the vast differences
 7 among putative class members, including differences in procedural posture, the status of
 8 individual petitions or applications, the basis for alleged delays or terminations, and the
 9 specific factual circumstances that affect each case. Plaintiffs effectively seek certification of
 an unwieldy conglomerate of disparate claims, masking highly individualized and context-
 specific issues behind the veneer of a single, uniform class.

10 The proposed subclasses fail to establish commonality or typicality because they do
 11 not present a single, cohesive issue capable of resolution “in one stroke.” *Wal-Mart*, 564
 12 U.S. at 350. Instead, the claims of each subclass member hinge on distinct, fact-specific
 13 determinations—ranging from processing delays attributed to security checks, to
 14 individualized determinations about eligibility for R&P benefits, to differing impacts of
 15 agency funding adjustments. The legal theories Plaintiffs advance are similarly fragmented,
 16 combining allegations related to policy shifts, funding suspensions, terminations, or
 reallocations, and procedural delays without demonstrating how these disparate issues align
 to form a unified legal question.

17 Furthermore, Plaintiffs’ claims do not meet Rule 23(b)(2)’s requirement that the
 18 challenged government actions or inactions affect all class members in a uniform way. For
 19 example, some refugees are awaiting travel arrangements, while others are navigating post-
 arrival services, and still others are petitioning for family reunification under follow-to-join
 processes. There is no one-size-fits-all solution that addresses these varied situations.

21 Finally, justiciability issues preclude certification. The proposed classes include
 22 individuals at various stages of the refugee admissions process, some of whom may not have
 23 completed required steps or exhausted administrative remedies. Others may have received
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1 final decisions or experienced changes in status, rendering their claims moot. Plaintiffs'
 2 overly broad and ill-defined subclasses thus fail to present a live case or controversy
 3 appropriate for class-wide relief. For these reasons, Plaintiffs' motion for class certification
 4 should be denied.

5 **V. Legal Standard**

6 Under Rule 23, a party seeking class certification must satisfy all four prerequisites of
 7 Rule 23(a)— numerosity, commonality, typicality, and adequacy—and at least one of the
 8 requirements of Rule 23(b). *Wal-Mart*, 564 U.S. at 350. Plaintiffs must prove that the
 9 proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem*
 10 *Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). To meet Rule 23(b)(2), Plaintiffs must
 demonstrate that Defendants acted or refused to act on grounds that apply generally to the
 11 class, making final injunctive relief appropriate for the class as a whole.

12 **VI. Plaintiffs Fail to Satisfy Rule 23(a).**

13 **A. The proposed class fails to satisfy Rule 23(a)’s commonality requirement 14 and typicality requirements.**

15 The commonality and typicality requirements of Rule 23(a)(2) and (a)(3) are
 16 interrelated and often merge. *Wal-Mart*, 564 U.S. at 350. “Both [requirements] serve as
 17 guideposts for determining whether under the particular circumstances maintenance of a
 18 class action is economical and whether the named plaintiff[s’] claim and the class claims are
 19 so interrelated that the interests of the class members will be fairly and adequately protected
 20 in their absence.” *Id.*

21 Here, Plaintiffs cannot establish either requirement. Plaintiffs cannot demonstrate
 22 commonality because they do not challenge one systemwide practice or policy applied to all
 23 proposed class members, and they cannot identify a harm common to all proposed class
 24 members. Plaintiffs cannot demonstrate typicality because the proposed class
 representatives’ legal claims, interests, and circumstances are not typical of one another or
 each putative class member. Commonality and typicality cannot be established where, as
 here, Plaintiffs propose an amorphous class comprised of individuals subject to a variety of

1 agency programs and processes, who present a myriad of divergent factual circumstances.
 2 Fed. R. Civ. P. 23(a)(2), (3).

3 **a. Plaintiffs Fail to Establish Commonality**

4 As the Supreme Court noted in *Wal-Mart*, Rule 23(a)(2) requires a plaintiff to
 5 establish that “there are questions of law or fact common to the class.” 564 U.S. at 349. But
 6 this language is “easy to misread, since any competently crafted complaint literally raises
 7 common questions.” *Id.* As such, “[i]t is not the raising of common ‘questions’—even in
 8 droves—but, rather the capacity of a class-wide proceeding to generate common answers apt
 9 to drive the resolution of the litigation.” *Id.* at 350. “Commonality requires the plaintiff to
 10 demonstrate that the class members have suffered the same injury,” and “[t]heir claims must
 11 depend upon a common contention.” *Id.* at 349 (emphasis added). “Dissimilarities within the
 12 proposed class are what have the potential to impede the generation of common answers.” *Id.*
 13 Accordingly, Plaintiffs must demonstrate that the factual differences in the proposed class
 14 are immaterial, and that the questions can be answered (and any violation remedied) the
 15 same way for every member of the class. *See id.* Critically, a proposed class that includes
 16 members who are not entitled to relief—or that would lead to the court granting relief to
 17 individuals who remain unharmed by Defendants’ allegedly harmful conduct—cannot meet
 18 the Rule 23 commonality requirements.

19 Here, Plaintiffs argue that commonality exists when “Plaintiffs challenge Defendants’
 20 unlawful policies, rather than their specific application to any individual subclass member.”
 21 Mot. at 14. They posit that this sweeping challenge of various agency actions allows for a
 22 finding of commonality despite individual factual differences among proposed class and
 23 subclass members. *Id.* Plaintiffs’ commonality argument is, however, fatally flawed in two
 24 ways. First, Plaintiffs do not and cannot point to a universal policy that applies to all
 proposed class members, and, resultantly, proposed class members do not share a common
 legal issue or alleged harm. That Plaintiffs divide their proposed class into subclasses does
 not cure this. Second, Plaintiffs do not and cannot demonstrate that the factual differences
 amongst proposed class members are immaterial such that a common answer survives.

1 Here, Plaintiffs raise questions that are “easy to misread” as common, asking whether
 2 the challenged agency actions violate the Refugee Act, the APA, and the Constitution. Mot.
 3 at 15. Yet, “[c]ommonality requires the plaintiff to demonstrate that the class members ‘have
 4 suffered the same injury.’” *Id.* at 350 (quoting *General Tele. Co. of Southwest. v. Falcon*,
 5 457 U.S. 147, 157 (1982)); *Willis v City of Seattle*, 943 F.3d 882, 885 (9th Cir. 2019).
 6 Plaintiffs cannot satisfy their burden by merely alleging that all proposed class members
 7 have “suffered a violation of the same provision of law.” *Walmart*, 564 U.S. at 350. Instead,
 8 a finding of commonality requires identifying “a single policy or practice which the
 9 proposed class members are all subject to.” *Willis*, 954 F.3d at 885 (citing *Parsons v. Ryan*,
 10 754 F.3d 657, 678 (9th Cir. 2014)); *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010)
 11 (explaining that class certification requires the court “to look at whether class members seek
 12 uniform relief from a practice applicable to all of them”). “These policies and practices are
 13 the ‘glue’ that holds together the putative class … either each of the policies and practices is
 14 unlawful as to *every* [proposed member] or it is not.” *Willis*, 954 F.3d at 885. (emphasis
 15 added). Here, Plaintiffs do not even attempt to assert that they are challenging a single
 16 policy, instead pointing to various agency actions, including the suspension of refugee
 17 processing and admissions and the halting of USRAP-related funding. Mot. at 15.

18 Even the proposed subclasses consist of individuals with vastly different
 19 circumstances, experiences, and alleged harms. For example, while the Refugee and Family
 20 Member Subclass plaintiffs generally allege that the termination of funding directly impacted
 21 them, the specific nature and immediacy of their claimed harms vary significantly. *See* Dkt.
 22 Nos. 15-14, 15-17, 15-18, 15-19, 15-21, 15-22. One Plaintiff alleges ongoing personal safety
 23 concerns, while others focus on economic difficulties or delays in processing. *Id.*

24 The FTJ and Refugee and Family Member Subclasses encompass individuals who are
 25 at different stages of the immigration process, with differing circumstances that affect their
 26 claims. Mot. at 9. The FTJ Subclass also lacks commonality because each petitioner’s
 27 situation differs. Some petitioners have already completed parts of the process, while others
 28 have not yet filed. Additionally, family members’ living situations vary widely—some are in
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1 stable environments, while others allege they are experiencing urgent and unsafe conditions.
 2 Mot. at 10.

3 Additionally, the R&P Subclass includes recently arrived refugees who vary
 4 significantly in their post-resettlement support needs, geographic locations, and access to
 5 alternative assistance. For instance, some individuals may encounter gaps in support due to
 6 the closure of a local partner agency, while others may remain unaffected due to full
 coverage from private sponsorships or alternative NGOs.

7 Further, Plaintiffs' proposed subclasses include individuals who have not been
 8 impacted—let alone harmed—in any way by any of the challenged agency actions. The
 9 subclasses sweep in all potential future applicants for admission to the U.S. as a refugee,
 10 future FTJ petitioners, and future newly-resettled refugees. *See* Mot. at 6, 14-15 outlining
 11 proposed subclasses to include individuals who are “or will be processed for admission,”
 12 who are “or will be [] resettled in the United States,” and who have “or will have” their
 applications and petitions impacted.

b. Plaintiffs Cannot Satisfy Typicality

13 The Rule 23(a)(3) typicality requirement seeks to determine “whether the named
 14 plaintiff[s]’ claim[s] and the class claims are so interrelated that the interests of the class
 15 members will be fairly and adequately protected in their absence.” *Wal-Mart*, 564 U.S. at
 16 350; *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017). Here, Plaintiffs cannot
 17 demonstrate typicality because the proposed class representatives’ legal claims, interests, and
 circumstances are not typical of one another or each putative class member.

18 For instance, the circumstances described by Plaintiff Esther indicate that Plaintiff
 19 Josephine’s situation and related hardships were not necessarily linked to any single
 20 challenged agency action or procedural change by Defendants. *See generally* Esther Decl.;
 21 Josephine Decl. This causation question suggests proposed class representative Esther’s legal
 22 claim and alleged harms may not be typical of those of proposed subclass members. And
 23 Plaintiff Ali’s declaration does not make clear whether he sought and received alternative
 services or how his specific circumstances align with the experiences of other proposed

1 members of the R&P subclass. *See generally* Ali Decl. Critically, the lack of detail outlining
 2 Ali's circumstances prevents this court from determining whether his situation is
 3 representative of the entire proposed subclass, which includes diverse individuals with
 4 varying levels of need and support.

5 **B. Plaintiffs are not Adequate Class Representatives**

6 The final hurdle interposed by Rule 23(a) is that "the representative parties will fairly
 7 and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). "To satisfy constitutional due process concerns, absent class members must
 8 be afforded adequate representation before entry of a judgment which binds them." *Hanlon*,
 9 150 F.3d at 1020. "Resolution of two questions determines legal adequacy: (1) do the named
 10 plaintiffs and their counsel have conflicts of interest with other class members and (2) will
 11 the named plaintiffs and their counsel prosecute the action vigorously on behalf of the
 12 class?" *Id.*

13 Here, given the disparate circumstances within each proposed subclass, it is unclear
 14 how any particular named Plaintiff can speak for the entire putative group or weigh all
 15 interests equally. And, as noted above, Plaintiffs Josephine and Esther's claims are moot, as
 16 Esther's application was processed and Josephine has now resettled in the United States.
 17 Dkt. No. 75 at 13. Given that they are no longer members of their proposed subclasses as
 18 defined, there can be no realistic suggestion that they maintain an interest aligned with those
 19 of the proposed subclass members or that they will continue prosecuting the action
 20 vigorously on behalf of their respective subclasses or the proposed class as a whole. *See E. Tex. Motor Freight Sys. Inc. v. Rodriguez*, 431 U.S. 395, 404-05 (1977) (finding that if a
 21 named plaintiff is not a member of the class he purports to represent, he cannot be expected
 22 to fairly and adequately represent the interests of the class). Indeed, "[m]ost courts have
 23 adopted a strict, bright-line rule that mooting of a named plaintiff's claim *before* class
 24 certification requires dismissal of the entire action as moot if an adequate substitute cannot
 intervene." *Newberg and Rubenstein on Class Actions* § 2.9 at 3 (6th ed. 2024 update)

1 (emphasis added); see e.g., *Kuahulu v. Emps. Ins. of Wausau*, 557 F.2d 1334 (9th Cir. 1977)
 2 (finding, where plaintiff's claim became moot before class was certified, entire appeal would
 3 be dismissed as moot).

4 The only way the Court could certify the FTJ subclass despite the mootness of
 5 Plaintiffs Esther and Josephine's claims is if their claims were "inherently transitory," such
 6 that it was likely, at the time of filing, that their claims would moot out before the Court
 7 could certify the class. *See Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1091 (9th Cir.
 8 2011). But the FTJ application process often takes years and, as such, the claims of FTJ
 9 petitioners and their relatives cannot be labeled as inherently transitory. If anything, that, at
 10 the time of filing, Josephine was a plane ticket away from resettling in the U.S. serves to
 11 underscore that Joesphine and Esther are not similarly situated to proposed subclass
 12 members and are, therefore, unable to adequately represent their proposed subclasses.

11 **VII. Plaintiffs Fail to Satisfy Rule 23(b)(2)**

12 Even if class proponents can satisfy Rule 23(a), they still must show that their claims
 13 come within one of the three types of class actions permitted by Rule 23(b)(1), (2) or (3). *See*
 14 Fed. R. Civ. P. 23(b). Rule 23(b)(2) requires Plaintiffs to demonstrate that Defendants have
 15 "acted or refused to act on grounds that apply generally to the class, so that final injunctive
 16 relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed.
 17 R. Civ. P. 23(b)(2). Here, Plaintiffs have not demonstrated that the alleged harms arise from
 18 a uniform policy applied across the proposed class. They do not allege that any one action
 19 impacts every proposed class member in the same way—or even at all. Instead, the harms
 20 alleged often result from case-specific factors, such as the availability of local resources,
 21 individual processing delays, or differences in resettlement assistance. Therefore, any
 22 injunctive relief would require individualized analysis, precluding a one-size-fits-all solution.
 23 And, critically, the proposed class includes individuals who have not yet filed petitions for
 24

1 family members or applications for immigrant visas, making it speculative whether they will
 2 ever be impacted by the challenged actions, let alone harmed.

3 Rule 23(b)(2) demands a certain cohesiveness among proposed class members with
 4 respect to their injuries and the relief sought, the absence of which can preclude certification.
5 Shook v. Bd. Of Cnty. Commissioners of Cnty. of El Paso, 543 F.3d 597, 604 (10th Cir.
6 2008); Maldonado v. Ochsner Clinic Found., 493 F.3d 521, 524 (5th Cir.2007); *In re St.*
7 Jude Med., Inc., 425 F.3d 1116, 1121 (8th Cir.2005); *Barnes v. Am. Tobacco Co.*, 161 F.3d
8 127, 143 (3d Cir.1998); see also Newberg § 4.11. Here, Plaintiffs' claims and the relief
9 sought lack the requisite cohesiveness because the proposed subclasses consist of individuals
10 experiencing disparate harms and circumstances. Mot. at 11. The proposed subclasses
11 include individuals at different stages of the refugee process, such as newly arrived refugees
12 seeking R&P support, U.S.-based petitioners for family reunification, and overseas refugees
13 awaiting processing. These varying situations necessitate distinct and individualized
14 remedies, not a single, class-wide injunction. For example, addressing R&P funding
15 challenges would not resolve the issues faced by overseas applicants stalled in security
16 processing. Mot. at 14. Because the merits of each class member's claim hinge on factors
17 unique to them, this Court cannot enter an injunction or declaratory relief so that the
*18 challenged conduct "can be enjoined or declared unlawful only as to *all* of the class members*
*19 or as to *none* of them."* *Wal-Mart*, 564 U.S. at 360.

Plaintiffs' attempt to use Rule 23(b)(2) to seek sweeping, class-wide injunctive relief fails because the proposed remedies do not uniformly address the diverse and individualized issues presented. Accordingly, Rule 23(b)(2) certification is inappropriate.

CONCLUSION

Plaintiffs' proposed subclasses each present diverse, individualized claims that hinge on discretionary decisions and multifaceted resource allocations. Rule 23 does not permit transforming these complex discretionary determinations into a monolithic class action. Plaintiffs fail several criterion under Rule 23(a), and they cannot meet Rule 23(b)(2)'s

1 requirement for uniform injunctive relief. For all these reasons, Defendants respectfully
2 request that the Court deny Plaintiffs' Motion for Class Certification in its entirety.

3 DATED: April 4, 2025

Respectfully submitted,

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7 Civil Division

AUGUST FLENTJE
8 Acting Director

9 */s/ Nancy K. Canter*
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17 I certify that this memorandum contains 4,421
18 words, in compliance with the Local Rules.

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